

Judge Stanley A. Bastian

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON – YAKIMA DIVISION

KENNETH KLUTH and STEPHEN
SCHENK,

Plaintiff

v.

SANTANDER CONSUMER USA
INC. and AUTO TRACKERS AND
RECOVERY NORTH, LLC,

Defendants.

NO. 1:17-cv-03149-SAB

STIPULATED PROTECTIVE
ORDER

[PROPOSED]

This Confidentiality Stipulation and Protective Order (this “Protective Order”) shall govern the use and dissemination of all information, documents, or materials that are produced in this action and designated as “Confidential” or “Confidential Attorney Eyes Only.” Any Party or non-party may, in good faith,

STIPULATED PROTECTIVE ORDER
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1 designate as “Confidential” or “Confidential Attorney Eyes Only” any documents,
2 interrogatory answers, responses to requests for admission, deposition transcripts,
3 information or other written, recorded, or graphic material produced or disclosed in
4 this litigation that the producing party considers to be subject to this Protective
5 Order.
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7 2. The term “Confidential Information,” as used in this Protective Order,
8 shall mean any discovery material that the producing party, in good faith, reasonably
9 believes contains or constitutes (a) information not in the public domain that reflects
10 confidential financial or commercial information, or information otherwise entitled
11 to protection with Fed. R. Civ. P. 26(c)(1)(G), or other information required by law
12 or agreement to be kept confidential, (b) matters that constitute or contain trade
13 secrets pursuant to applicable law, and (c) non-public personal information of third-
14 parties, including information that identifies the personal or financial information
15 for a given person, including name, address, account number, telephone number,
16 place or position of work, or other identifying information.
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18 3. The term “Confidential Attorney Eyes Only Information” as used in
19 this Protective Order shall mean information not in the public domain that is so
20 proprietary or competitively sensitive that its disclosure to the opposing party may
21 cause competitive injury. Such information may include, but is not limited to, highly
22 sensitive financial and trade secret information. The parties recognize that the type
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1 of information which can properly be considered “Confidential Attorney Eyes Only”
2 is therefore limited; accordingly, the parties expect to use this designation sparingly.

3 4. Nothing in this Protective Order shall limit the right of a Party to use
4 documents or information that (a) was lawfully in its possession prior to the initiation
5 of this action; (b) was, is, or becomes public knowledge, not in violation of this
6 Protective Order; (c) is acquired by the non-producing party from a third-party who
7 breached no legal obligation in providing the document(s) to the non-producing
8 party; (d) becomes declassified under the Protective Order. The parties shall not
9 designate information as “Confidential” or “Confidential Attorneys Eyes Only” for
10 the purpose of interfering with the rights of the receiving Party to conduct discovery.
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14 **Confidential and Confidential Attorney Eyes Only Information**

15 5. Any Party to this action or other person or entity, including any third
16 party, who produces or supplies information, documents or other materials used in
17 this action (hereinafter, the “Designating Party” or the “Producing Party”) may
18 designate as “Confidential” or “Confidential Attorney Eyes Only” any such
19 information, document or material that it reasonably and in good faith believes
20 constitutes or contains Confidential Information or Confidential Attorney Eyes Only
21 Information under the terms of this Protective Order. The designation of discovery
22 material as Confidential or Confidential Attorney Eyes Only for purposes of this
23 Protective Order shall be made by affixing the word “Confidential” on the document
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1 or material containing such information, and upon each page so designated, if
2 practicable, a legend that in substance states: “CONFIDENTIAL” or
3 “CONFIDENTIAL ATTORNEY EYES ONLY.”
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5 6. Depositions may be designated “Confidential” or “Confidential
6 Attorney Eyes Only” by indicating that fact on the record at the deposition or by
7 providing written notice to the other Party within thirty (30) days of receipt of the
8 hard copy transcript. If a Designating Party has advised the court reporter that
9 Confidential Information or Confidential Attorney Eyes Only Information has been
10 disclosed during a deposition, the court reporter shall include on the cover page the
11 following indication: “DEPOSITION CONTAINS [CONFIDENTIAL
12 INFORMATION / CONFIDENTIAL ATTORNEY EYES ONLY
13 INFORMATION] OF [NAME OF DESIGNATING PARTY] – SUBJECT TO
14 PROTECTIVE ORDER.” Within thirty (30) business days of receipt of the initial
15 deposition transcript, the Designating Party shall advise opposing counsel of the
16 specific pages and lines in which Confidential Information or Confidential Attorney
17 Eyes Only Information appears.
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22 7. Confidential Information used in this litigation may be disclosed only
23 to:
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25 a. The Court and its personnel.

26 b. The Parties’ counsel and employees of such

counsel assigned to and necessary to assist such counsel in this action.

- c. The named Parties, including any representative of the Parties, but only for use in the prosecution, defense, or settlement of this action.
- d. Any consultant, investigator or expert (collectively, "Expert") who is assisting in the preparation and trial of this litigation, but only to the extent reasonably necessary to enable such Expert to render such assistance in this action.
- e. A deponent or witness, prior to or in the course of a deposition, provided that such persons may be shown copies of designated material only during the course of preparation for his or her testimony, or in the actual course of deposition, may not retain any designated material and must be informed of the confidential nature of the materials.
- f. Court reporters and videographers engaged by counsel of record to transcribe testimony in connection with this action.
- g. An outside photocopy vendor retained by counsel who is assisting in the preparation and trial of this litigation by making photocopies of documents, but only to the extent necessary to enable the photocopy vendor to render such assistance in this action.

1 8. Confidential Attorney Eyes Only Information used in this litigation
2 may be disclosed only to:

- 3 a. The Court and its personnel.
- 4 b. The Parties' counsel and employees of such
5 counsel assigned to and necessary to assist
6 such counsel in this action.
- 7 c. Any consultant, investigator or expert
8 (collectively, "Expert") who is assisting in
9 the preparation and trial of this litigation, but
10 only to the extent reasonably necessary to
11 enable such Expert to render such assistance
12 in this action.
- 13 d. A deponent or witness, prior to or in the
14 course of a deposition, provided that such
15 persons may be shown copies of designated
16 material only during the course of
17 preparation for his or her testimony, or in the
18 actual course of deposition, may not retain
19 any designated material and must be
20 informed of the confidential nature of the
21 materials.
- 22 e. Court reporters and videographers engaged
23 by counsel of record to transcribe testimony
24 in connection with this action.
- 25 f. An outside photocopy vendor retained by
26 counsel who is assisting in the preparation
and trial of this litigation by making
photocopies of documents, but only to the
extent necessary to enable the photocopy
vendor to render such assistance in this
action.

1 9. If a Party wishes to disclose Confidential Information or Confidential
2 Attorney Eyes Only Information to any person not described in Paragraphs 7 and 8
3 of this Protective Order, permission to so disclose must be requested from the
4 Designating Party in writing. If within seven (7) business days of request for
5 permission, the Designating Party objects to the proposed disclosure, such disclosure
6 shall not be made unless, upon motion by the Party requesting such permission, the
7 Court orders otherwise.
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10 10. Prior to obtaining access to Confidential Information or Confidential
11 Attorney Eyes Only Information, any person to whom Confidential Information may
12 be disclosed pursuant to Paragraphs 7, 8, and 9 hereof, except the Court and their
13 personnel, shall be shown and shall read a copy of this Protective Order and shall
14 agree in writing to be bound by its terms by signing a copy of the Confidentiality
15 Acknowledgment attached hereto as Exhibit A (“Confidentiality
16 Acknowledgment”). Counsel for the Party obtaining a person’s signature on the
17 Confidentiality Acknowledgment shall retain the original signed acknowledgment,
18 and, if requested by the Designating Party, shall provide a copy of the signed
19 acknowledgment to counsel for the Designating Party, with the exception that the
20 Designating Party is not entitled to see an acknowledgement signed by an expert
21 who has not yet been disclosed as a testifying expert. Rather, counsel shall certify
22 that all such experts have acknowledged the confidentiality agreement.
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1 11. Where any Confidential Information or Confidential Attorney Eyes
2 Only Information is included in any filing, such filing shall be marked
3 **“CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”** and filed
4 pursuant to the Court’s practices related to filing under seal, if any. The filing Party
5 shall take all necessary steps to ensure that any such Confidential Information,
6 Confidential Attorney Eyes Only Information or information derived from
7 Confidential Information or Confidential Attorney Eyes Only Information will be
8 maintained under seal by the Court.
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11 **General Provisions**
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13 12. Except to the extent expressly authorized in this Protective Order,
14 Confidential Information and Confidential Attorney Eyes Only Information shall not
15 be used or disclosed for any purpose other than the preparation and trial of this case,
16 and/or any appeal therefrom, subject to the provisions of this Protective Order. Use
17 or disclosure of Confidential Information and Confidential Attorney Eyes Only
18 Information in any other litigation or for any other purposes is expressly prohibited.
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20 13. Any summary, compilation, notes, copy, electronic image, or database
21 containing Confidential Information and/or Confidential Attorney Eyes Only
22 Information shall be subject to the terms of this Protective Order to the same extent
23 as the material or information from which such summary, compilation, notes, copy,
24 electronic image, or database is made or derived.
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1 14. Within thirty (30) days of receipt of a document marked Confidential
2 and/or Confidential Attorney Eyes Only, any Party may object to a designation by
3 notifying the Designating Party in writing of that objection. The writing also must
4 specify the Bates range corresponding to the beginning and end of each document
5 subject to objection as well as the Bates number of the particular page or pages of
6 such documents that actually contain the designated materials to which the objection
7 is made. The parties shall, within fourteen (14) days of service of the written
8 objection, confer concerning the objection. If the objection is not resolved, the
9 objecting Party shall, within twenty-one (21) days of the conference, file and serve
10 a motion to resolve the dispute over the designation of the material. If a motion is
11 filed, information subject to dispute shall, until further order of the Court, be treated
12 consistently with this designation. If no such motion is filed within the stated time
13 period, the material will be treated consistently with its designation. With respect to
14 any material that is re-designated or ceases to be subject to the protection of this
15 Protective Order, the Designating Party shall, at its expense, provide to each party
16 which so requests additional copies thereof from which all confidentiality legends
17 affixed hereunder have been adjusted to reflect the re-designation or removed as
18 appropriate.
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25 15. If any Producing Party inadvertently fails to designate any information
26 as Confidential or Confidential Attorney Eyes Only at the time of production or

1 disclosure, that party shall not be deemed to have waived, in whole or in part, any
2 claim to such designation, either as to specific information disclosed or as to any
3 other information on the same or related subject matter. As soon as reasonably
4 practicable after the party becomes aware of the inadvertent failure to designate
5 material as Confidential or Confidential Attorney Eyes Only, the party shall identify
6 and designate such information as Confidential or Confidential Attorney Eyes Only
7 in writing, accompanied by substitute copies of each item stamped or labeled
8 Confidential or Confidential Attorney Eyes Only. If such written notice is given, all
9 information so designated shall be subject to this Protective Order as if it had been
10 initially designated as Confidential Information or Confidential Attorney Eyes Only
11 Information. Within seven (7) days of receipt of the substitute copies marked
12 Confidential or Confidential Attorney Eyes Only, all receiving parties shall return
13 or destroy the previously unstamped or unlabeled information and all copies thereof.
14 If, prior to receiving such notice, a receiving party has disseminated the Confidential
15 Information or Confidential Attorney Eyes Only Information to individuals not
16 authorized to receive such Confidential Information or Confidential Attorney Eyes
17 Only Information pursuant to this Protective Order, the receiving party shall make a
18 reasonable effort to retrieve the Confidential Information or Confidential Attorney
19 Eyes Only Information, or if such efforts fail, to advise each recipient that the
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1 Confidential Information or Confidential Attorney Eyes Only Information is subject
2 to this Protective Order.

3 16. Nothing in this Protective Order shall be deemed to restrict in any
4 manner the use by any Designating Party of any information in its own documents
5 and materials.
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7 17. If counsel for any Party receives notice of any subpoena or other
8 compulsory process commanding production of Confidential Information or
9 Confidential Attorney Eyes Only Information that a Party has obtained under the
10 terms of this Protective Order, counsel for such party shall notify the Designating
11 Party in writing immediately upon receipt of such subpoena or process, and shall not
12 produce the Confidential Information and/or Confidential Attorney Eyes Only
13 Information, until the Designating Party has had reasonable time to take appropriate
14 steps to protect the material. It shall be the responsibility of the Designating Party
15 to obtain relief from the subpoena or order prior to the due date of compliance and,
16 to give the Designating Party an opportunity to obtain such relief, the Party from
17 whom such information is sought shall not make the disclosure before the actual due
18 date of compliance set forth in the subpoena or order.
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23 18. This Protective Order shall not prevent any of the Parties from moving
24 the Court for an order that Confidential Information and/or Confidential Attorney
25 Eyes Only Information may be disclosed other than in accordance with this
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1 Protective Order. This Protective Order is without prejudice to the right of any Party
2 to seek modification of it from the Court. It shall remain in effect until such time as
3 it is modified, amended, or rescinded by the Court. This Protective Order does not
4 affect any Party's rights to object to discovery on any grounds other than an
5 objection based solely on the ground that the information sought is confidential in
6 nature.
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9 19. Nothing in this Protective Order shall be deemed to be a waiver of any
10 Party's right to oppose production or admissibility of any information or documents
11 on any ground, including without limitation, lack of timeliness of the request, lack
12 of relevance, lack of materiality, as a privileged communication, as work product of
13 counsel, as not calculated to lead to the discovery of admissible evidence, or as not
14 proportional to the needs of the case. Moreover, nothing in this Protective Order
15 shall preclude a Party from seeking such additional protection with regard to
16 confidentiality as that Party may deem appropriate.
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20 20. Nothing in this Protective Order shall require any Party to produce
21 Confidential Information or documents containing Confidential Information and
22 nothing in this Protective Order shall result in the waiver by any Party of any
23 objection to any discovery request or the production of Confidential Information or
24 any document containing Confidential Information. The production subject to this
25 Protective Order of Confidential Information or documents containing Confidential
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1 Information shall not be deemed a waiver of any objection to the admissibility of
2 such documents or their contents that may exist under any applicable Rules of
3 Evidence. It is the intent of the parties and the Court hereto that any such objections
4 may be asserted prior to and at trial.
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6 21. This Protective Order shall not preclude any party from seeking and
7 obtaining from the Court additional protection with respect to the issues addressed
8 in the Protective Order. The parties agree that this Protective Order is without
9 prejudice to any position either Claimant or Respondent may take in any other cases.
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11 22. This Protective Order is not intended to govern the use of Confidential
12 Information at any trial of this action. Questions of the protection of Confidential
13 Information during trial will be presented to the Court and the Designating Party
14 prior to or during trial as each party deems appropriate.
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17 23. The inadvertent production of any document or information protected
18 by the attorney-client privilege, work product doctrine, and/or any other applicable
19 privilege shall not constitute a waiver of any such privilege or doctrine. Upon receipt
20 of notice of such inadvertent production from the producing Party, the receiving
21 Party shall, within seven (7) business days of such notice, either (a) return all copies
22 of such document(s) to the Producing Party other than copies containing attorney's
23 notes or other attorney work product that may have been placed thereon by counsel
24 for the receiving party and shall destroy all copies of such documents that contain
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1 such notes or other attorney work product or (b) shall apply to the Court for
2 resolution if the Producing Parties' claim of inadvertent production is disputed;
3 however, the receiving party may not use of the information while the application to
4 the Court is pending.
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6 24. The Court shall have continuing jurisdiction to modify, enforce,
7 interpret, or rescind this Protective Order, notwithstanding the termination of this
8 action.
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10 25. Within sixty (60) days after the conclusion of this action, including the
11 exhaustion of all appeals, counsel for all parties shall employ best efforts to return
12 all Confidential Information and Confidential Attorney Eyes Only Information
13 produced in this litigation (other than exhibits at the official court of record) to the
14 Designating Party or shall destroy such information. Counsel for any Party or third
15 party receiving Confidential Information and/or Confidential Attorney Eyes Only
16 Information shall make written certification of compliance with this provision and
17 shall deliver the same to counsel for each Designating Party within one hundred
18 twenty (120) days after the conclusion of this action, including the exhaustion of all
19 appeals. Should any Party or third party subsequently discover that, despite the use
20 of best efforts, any Confidential Information was not returned or destroyed, in either
21 electronic or hard copy formats, such party must immediately take steps to return or
22 destroy such information as outlined above.
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26. Any Party may seek a modification of this Protective Order at any time by filing an appropriate motion with the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 4th day of May, 2018.

ANDREWS ▪ SKINNER, P.S.

By s/ Karleen J. Scharer

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Attorneys for Defendants Santander
Consumer USA Inc. and Auto Trackers
and Recovery North, LLC

DATED this 4th day of May, 2018.

TRUEBLOOD LAW FIRM

/s/ Alexander B. Trueblood

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Fax: 206.832.4676
Alec.trueblood@truebloodlawfirm.com
Attorneys for Plaintiffs

1 PURSUANT TO STIPULATION, IT IS SO ORDERED
2

3 DATED AND ORDERED this ____ day of _____, 2018.
4

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6 _____
7 JUDGE STANLEY A. BASTIAN
8 UNITED STATES DISTRICT COURT
9 JUDGE
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA DIVISION

KENNETH KLUTH, and STEPHEN
SCHENK,

Plaintiffs,

vs.

SANTANDER CONSUMER USA
INC., and AUTO TRACKERS AND
RECOVERY NORTH, LLC,

Defendants.

Case No: 1:17-cv-03149-SAB

**APPENDIX A TO THE
PROTECTIVE ORDER**

CONFIDENTIALITY ACKNOWLEDGMENT

I, _____, hereby affirm that:

Information, including documents and things, designated as "Confidential
Information," or "Confidential Attorney Eyes Only Information," as defined in the

1 Protective Order entered in the above-captioned action ("Protective Order"), is being
2 provided to me pursuant to the terms and restrictions of the Protective Order.

3 I have been given a copy of and have read the Protective Order.

4 I am familiar with the terms of the Protective Order and I agree to comply
5 with and to be bound by its terms.

6 I submit to the jurisdiction of this Court for enforcement of the Protective
7 Order.
8

9 I agree not to use any Confidential Information or Confidential Attorney Eyes
10 Only Information disclosed to me pursuant to the Protective Order except for
11 purposes of the above-captioned litigation and not to disclose any of this information
12 to persons other than those specifically authorized by the Protective Order, without
13 the express written consent of the party who designated the information as
14 confidential or by order of the presiding judge. I also agree to notify any
15 stenographic, clerical or technical personnel who are required to assist me of the
16 terms of this Protective Order and of its binding effect on them and me.
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21 Dated: _____

Signature

Printed Name

Address

Address

Individual or Entity Represented

CERTIFICATE OF SERVICE

I hereby certify that on May 4th, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following individuals:

Alexander Trueblood
Trueblood Law Firm
1700 Seventh Ave., Suite 2100
Seattle, WA 98101
Attorneys for Plaintiffs

ANDREWS ▪ SKINNER, P.S.

By s/ Karleen J. Scharer
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